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BARRY E. HINKLE, Bar No. 071223  
KRISTINA L. HILLMAN, Bar No. 208599  
CONCEPCIÓN E. LOZANO-BATISTA, Bar No. 227227  
WEINBERG, ROGER & ROSENFELD  
A Professional Corporation  
1001 Marina Village Parkway, Suite 200  
Alameda, California 94501-1091  
Telephone (510) 337-1001  
Facsimile (510) 337-1023

Attorneys for Plaintiffs

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OAKLAND

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

THE BOARD OF TRUSTEES of the  
CARPENTERS HEALTH AND WELFARE  
TRUST FUND FOR CALIFORNIA;  
CARPENTERS VACATION-HOLIDAY  
TRUST FUND FOR NORTHERN  
CALIFORNIA; CARPENTERS PENSION  
TRUST FUND FOR NORTHERN  
CALIFORNIA; CARPENTERS ANNUITY  
TRUST FUND FOR NORTHERN  
CALIFORNIA; and CARPENTERS TRAINING  
TRUST FUND FOR NORTHERN  
CALIFORNIA; CARPENTERS 46  
NORTHERN CALIFORNIA COUNTIES  
CONFERENCE BOARD for itself and on behalf  
of the NORTHERN CALIFORNIA  
CARPENTERS REGIONAL COUNCIL and  
CARPENTERS UNION LOCAL No. 22

Plaintiffs,

v.

SAUL M. CRUZ, Individually; SAUL M.  
CRUZ, Individually and doing business as SMC  
MODULAR INSTALLATION; MAGDALENA  
L. CRUZ, Individually; MAGDALENA L.  
CRUZ, Individually and doing business as SMC  
MODULAR INSTALLATION; SMC  
MODULAR INSTALLATION; Does 1 through  
10, inclusive

Defendants.

) No.

008-01067

MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
PETITION TO CONFIRM  
ARBITRATION AWARDS

This Memorandum is filed in support of Plaintiffs' Petition to Confirm Arbitration Awards. This action involves a dispute which arose under a written collective bargaining agreement (herein after referred to as "CBA" or "Agreement"). The CBA sets forth a method for resolving disputes over the interpretation and/or application of the Agreement. Under the term of the CBA, said disputes are submitted to an impartial Board of Adjustment or an Arbitrator and the decisions of the Board of Adjustment or the Arbitrator are final and binding upon the parties. By way of the present Petition, Plaintiffs seek to compel the Defendant to comply with the Decisions and Awards of Arbitrator Gerald R. McKay and the Board of Adjustment (hereinafter the "Awards"), issued pursuant to the terms of the CBA. Furthermore, Plaintiffs seek an Order of this Court confirming said Awards, and making it a judgment of this Court.

**I. THE PARTIES AGREED THAT THE QUESTION WOULD BE RESOLVED BY AN ARBITRATOR AND THE BOARD OF ADJUSTMENT**

By virtue of the terms and conditions of the CBA, the parties agreed that the Arbitrator's and the Board of Adjustment's decisions would be final and binding on all parties. Under such circumstances, and having voluntarily submitted the disputes to arbitration by naming an Arbitrator and a Board of Adjustment, the employer cannot now contest the decisions of Arbitrator, Gerald R. McKay and the Board of Adjustment. In Ficek v. Southern Pacific Co., 338 F.2d 655 (9th Cir. 1964) cert. denied, 380 U.S. 988 (1965), the Ninth Circuit stated:

A claimant may not voluntarily submit his claim to arbitration, await the outcome, and, if the decision is unfavorable, then challenge the authority of the arbitrator's act.

Ficek, 338 F.2d at 657.

Having agreed to submit these disputes to arbitration, the employer cannot now argue that it was not arbitrable. See also International Brotherhood of Teamsters v. Washington Employers, Inc., 557 F.2d 1345, 1349-50 (9th Cir. 1977); International Association of Machinists and Aerospace Workers, Dist. 776 v. Texas Steel Co., 538 F.2d 1116, 1120 (5th Cir. 1976).

1       **II.       THE ARBITRATOR'S AND THE BOARD OF ADJUSTMENT'S DECISIONS**  
 2       **MEET THE APPLICABLE TESTS FOR VALIDITY**

3       The Ninth Circuit has defined the district courts' power with respect to the review of  
 4       arbitration awards as follows:

5               Judicial Review of arbitration awards is limited. An award is legitimate so  
 6               long as it "draws its essence" from the collective bargaining agreement and  
 7               does not "manifest an infidelity" to the agreement. United Steelworkers of  
 8               America v. Enterprise Wheel & Car Corp., 363 U.S. 593, 597-99, 80 S.Ct.  
 9               1358, 4 L.Ed.2d 1424 (1960). "[I]f, on its face, the award represents a  
 10              plausible interpretation of the contract in the context of the parties' conduct,  
 11              judicial inquiry ceases and the award must be affirmed." Holly Sugar  
 12              Corporation v. Distillery Union, 412 F.2d 899, 903 (9th Cir. 1969).

13       Riverboat Casino, Inc. v. Local Joint Executive Board of Las Vegas, 578 F.2d 250, 251 (9th Cir.  
 14       1978).

15       In this case, this Court could overturn the awards in question only if it found the reasoning  
 16       "so palpably faulty no judge, or group of judges could ever conceivably have made such a ruling."  
 17       Safeway Stores v. Bakery Workers Local 111, 390 F.2d 79, 82 (5th Cir. 1968). The awards herein  
 18       clearly meet the test of being viable, valid awards. The Court is "not empowered to review the  
 19       merits of an arbitration award which draws its essence from a collective bargaining agreement."  
 20       Painters Local Union No 171 v. Williams & Kelly, Inc., 605 F.2d 535, 538 (10th Cir. 1979).

21       The United States Supreme Court has clearly spoken on the role of the courts in enforcing  
 22       awards of arbitrators involving the interpretation of collective bargaining agreements in  
 23       relationships between labor and management. The Court sustains the notion that voluntary  
 24       arbitration agreements should not be lightly treated by the courts or other institutions dealing with  
 25       labor-management relations and such awards be given the highest weight. Thus, the Court stated  
 26       in United Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593, 597 (1960):

27               When an arbitrator is commissioned to interpret and apply the collective  
 28               bargaining agreement, he is to bring his informed judgment to bear in order  
              to reach a fair solution of the problem. This is especially true when it comes  
              to formulating remedies. There the need is for flexibility in meeting a wide  
              variety of situations. The draftsman may never have thought of what  
              specific remedy should be awarded to meet a particular contingency.  
              Nevertheless, an arbitrator is confined to interpretation and application of  
              the collective bargaining agreement; he does not sit to dispense his own  
              brand of industrial justice. He may of course look for guidance from many

sources, yet his award is legitimate only so long as it draws its essence from the collective bargaining agreement. When the arbitrator's words manifest an infidelity to this obligation, courts have no choice but to refuse enforcement of the award.

The tests set forth in Enterprise must be applied hereto and a judgment confirming the awards be granted. In Ludwig Honold Mfg. Co. v. Fletcher, 405 F.2d 1123, 1128 (3rd Cir. 1969), the Third Circuit clearly stated that the awards must be upheld "if the interpretation can in any rational way be derived from the agreement, viewed in the light of its language, its context, and any other indicia of the parties' intention...". See also United Steelworkers v. Warrior & Gulf, 363 U.S. 574, 582 (1960); Operating Engineers Local 150 v. Flair Builders, Inc., 406 U.S. 476 (1972); Northern California District Council of Hod Carriers v. Pennsylvania Pipeline, Inc., 103 Cal. App. 3d 163, 170 (1980).

It has further been uniformly held that where the contract is not explicit concerning the proper remedy, the Arbitrator, or a Board of Adjustment, is given wide latitude in fashioning an appropriate one. Mogge v. District 8, International Association of Machinists, 454 F.2d 510, 514 (7th Cir. 1971). The Ninth Circuit states the rule thus: "[I]f on its face, the award represents a plausible interpretation of the contract in the context of the parties' conduct, judicial inquiry ceases and the award must be affirmed." Holly Sugar Corp. v. Distillery, Rectifying, Wine & Allied Workers International Union, 412 F.2d 899, 903 (9th Cir. 1969)

### **III. PLAINTIFFS ARE ENTITLED TO AN AWARD OF ATTORNEYS' FEES IN THESE PROCEEDINGS**

Plaintiffs have been required to secure the services of counsel for the prosecution and enforcement of the Awards. Because Defendant's refusal to comply with the arbitration awards is unjustified and in bad faith, Plaintiffs seek attorneys' fees and costs incurred in obtaining compliance with the awards.

The Supreme Court has held that attorneys' fees can be awarded "when the losing party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons." Alyeska Pipeline Service Co. v. Wilderness Society, 421 U.S. 240, 258-59 (1975). In 1983, the Ninth Circuit Court of Appeals applied that rule in a case where, as here, an employer refused to abide by the award of an

1 arbitrator. In International Union of Petroleum and Industrial Workers v. Western Industrial  
 2 Maintenance, Inc., 707 F.2d 425 (9th Cir. 1983), the court held that:

3 "[B]ad faith may be demonstrated by showing that a defendant's obstinacy  
 4 in granting a plaintiff his clear legal rights necessitated resort to legal action  
 5 with all the expense and delay entailed in litigation." Huecker v. Milburn,  
 6 538 F.2d 1241, 1245 n.9 (6<sup>th</sup> Cir. 1976) The award of attorneys' fees in the  
 7 latter context satisfies a dual purpose -- deterrence and compensation. The  
 8 threat of an award of attorneys' fees tends to deter frivolous dilatory tactics.  
 9 The award also compensates a plaintiff "for the added expense of having to  
 10 vindicate clearly established rights in court." Id.

11 Western Industrial, 707 F.2d at 428.

12 The Ninth Circuit has also held that "an unjustified refusal to abide by an arbitrator's award  
 13 may equate [with] an act taken in bad faith, vexatiously or for oppressive reasons." Id. at 428. The  
 14 court ruled that the employer did not present justifiable grounds for the invalidity of the arbitration  
 15 award, rejecting the contention that one of the issues was not arbitrable.

16 Unjustified refusal to abide by an arbitrator's award can be, in and of itself, an act taken in  
 17 bad faith, vexatiously or for oppressive reasons. Sheetmetal Workers' Int'l Ass'n, Local Union  
 18 No. 359 v. Madison Industries, Inc. of Arizona, 84 F.3d 1186, 1191 (9th Cir. 1996) (noting that  
 19 employer failed to file a petition to vacate the award and requested a vacation only in response to  
 20 the Union's petition to confirm it).

21 Arbitration is a fundamental foundation for stable national labor relations policy, and  
 22 advances the effective resolution of disputes and the furthering of industrial stabilization.  
 23 Therefore, "the deterrence aspect of an award of attorneys' fees is particularly served where a party,  
 24 without justification, refuses to abide by an arbitration award." Western Industrial, 707 F.2d  
 25 at 428.

26 The District Court has the power to award attorneys' fees and expenses to the prevailing  
 27 party in a suit to enforce arbitration awards if the losing party acted in bad faith. There must be an  
 28 unjustified refusal to abide by the arbitrator's decisions, and the objections to awards must be  
 frivolous. The failure of the party opposing a decision to take timely action to challenge it on valid  
 grounds, thus forcing the other party to undertake the time consuming and burdensome expense of

1 an enforcement action, are factors in determining bad faith. See, Courier-Citizen Co. v. Boston  
2 Electrotypers Union No. 11, 702 F.2d 273, 282 (1st Cir. 1983) (endorsing attorneys' fees award  
3 "when a party 'without justification' contests an enforceable award") United Steelworkers of  
4 America v. United States Gypsum Co., 492 F.2d 713, 724 (5th Cir.) cert. denied, 419 U.S. 998  
5 (1974). ("The district court has the authority to award attorneys' fees where it determines that a  
6 party has without justification refused to abide by an award of an arbitrator."). Actors Equity v.  
7 American Dinner Theater, 802 F.2d 1038 (8th Cir. 1986); Local 34 Asbestos Workers v. General  
8 Pipe Covering, 792 F.2d 96 (8th Cir. 1986); United Automobile Workers v. United Farm Tools,  
9 Inc., 762 F.2d 76, 77 (8th Cir. 1985).

10 In the present case, the parties to a collective bargaining agreement included in their  
11 agreement an inexpensive and efficient dispute resolution mechanism: the grievance arbitration  
12 procedure. This is one of the most important provisions of a collective bargaining agreement  
13 entered into between an employer and a Union on behalf of its members. In most cases, employees  
14 give up the right to strike during the term of a contract in return for the employer's promise to  
15 submit all "grievances" to a neutral arbitrator for final and binding decision. Moreover, both  
16 parties benefit from the existence of this mechanism designed to provide an inexpensive and  
17 efficient resolution of disputes. By refusing to comply with the final and binding arbitration  
18 awards, Defendant has subverted a fundamental provision of the agreement.

19 Furthermore, the Defendant has provided no reason why it refused to implement the  
20 awards. Because it has caused unnecessary expense and delay, and has failed to set forth any  
21 meritorious arguments to justify its conduct, the Court should issue an order confirming the  
22 arbitration awards and awarding Plaintiffs their reasonable attorneys' fees as provided by law.

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IV. CONCLUSION

For the reasons stated above, it is respectively submitted that the Decisions of Arbitrator Gerald R. McKay and the Board of Adjustment should be confirmed in all respects, made a Judgment of this Court and the Court should award the Plaintiffs their attorneys' fees and costs.

Dated: February 22, 2008

WEINBERG, ROGER & ROSENFELD  
A Professional Corporation

By:   
KRISTINA L. HILLMAN  
Attorneys for Plaintiffs

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